

REMARKS

Claim 1 has been amended to more clearly define the subject matter of the invention.

Claims 1-5 have been amended to improve readability. Claims 1-5 remain pending.

In the Office Action, claims 1 and 2 were rejected under 35 USC 102(a) as anticipated by Fujioka (JP 2000-56827). Claim 3 was rejected under 35 USC 103(a) as unpatentable over Fujioka in view of “Masashi” [sic, should be “Nishimoto”]. Claims 4 and 5 were rejected under 35 USC 103(a) as unpatentable over Fujioka in view of well-known prior art. Applicant respectfully traverses the rejections.

To establish a prima facie case of anticipation, the reference must teach every element of the claim. MPEP 2131. Claim 1 recites an operating cab including an operating member operating the attachment element. Claim 1 also recites that the voice attachment control apparatus includes an electronic control apparatus effecting a desired expansion/contraction displacement of the attachment element in accordance with operation of the operating member. Fujioka does not disclose an operating cab including an operating member operating the attachment element. To the contrary, Fujioka concerns remote control of a construction machine. Similarly, Fujioka does not disclose the voice attachment control apparatus including an electronic control apparatus effecting a desired expansion/contraction displacement of the attachment element in accordance with operation of the operating member. Therefore, Fujioka does not anticipate claim 1, and this rejection should be withdrawn. Claim 1 is allowable over the prior art of record.

Claims 2 and 3 depend from claim 1 and are therefore allowable for at least the same reasons.

Regarding claims 4 and 5, the Examiner takes official notice “on the well-known as a construction working member in order to operate a shear connected to actuators and operable of performing a movement of grasping an object and a rotational movement as an attachment element.” According to MPEP 2144.03, taking official notice of a fact should only occur in limited

circumstances and should be judiciously applied. Ordinarily, there must be some form of evidence in the record to support an Examiner's assertion of common knowledge, and the applicant should be presented with the explicit basis on which the Examiner regards the matter as being subject to official notice and be allowed to challenge the assertion. If an applicant challenges a factual assertion as not properly officially noticed or not properly based on common knowledge, the Examiner must support the finding with adequate evidence. See also 37 CFR 1.104(d)(2).

Applicant challenges the Examiner's assertion that operating a shear connected to actuators for grasping an object and rotating an attachment, as claimed in claims 4 and 5, was well known. The Examiner's rejection of claims 4 and 5 points to no evidence in the record to support his assertion of common knowledge, and the Examiner has not provided an explicit basis on which he regards the matter as subject to official notice.

Regarding claim 4, it was not well known to operate a shear connected to actuators for grasping an object and rotating an attachment element, using a method comprising analyzing a voice command representative of an instruction by voice regarding a movement of the attachment element to discriminate the instruction of the voice command and performing a first movement of the actuators, stopping the shear once after analyzing the voice command, and analyzing, after stopping the shear, another voice command to discriminate a second instruction of the voice command and performing a second movement of the actuators based on the second instruction.

Regarding claim 5, it was not well known to operate a shear connected to actuators for grasping an object and rotating an attachment element, using a method comprising analyzing a voice command representative of an instruction by voice regarding an interlocking movement of the attachment element which includes a plurality of movements to be performed simultaneously to discriminate the instruction of the voice command and performing the interlocking movement of the actuators based on the instruction.

Because applicant has challenged the Examiner's taking of official notice, the examiner must support the finding with adequate evidence. Applicant asserts that adequate evidence does not exist, that claims 4 and 5 are not anticipated or rendered obvious by the prior art of record, and are therefore allowable.

In view of the above, each of the claims in this application is in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing Attorney Docket No. 356882001200.

Dated: August 25, 2005

Respectfully submitted,

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